# PRIVY COUNCIL REPORT

## HOE JOO SAWMILLS v. SIGMA (AIR CONDITIONING) SDN. BHD.

**[Privy Council (Lord Diplock, Lord Bridge of Harwich, Sir John Megaw & Sir Owen Woodhouse) July 28, 1981]**

**[Privy Council Appeal No. 15 of 1980]**

*Practice and Procedure — Appeal — Special leave to appeal out of time — Privy Council.*

In this appeal from the decision of the Federal Court ([1979] 2 M.L.J. 236) the Board confirmed the rule that it would be reluctant to interfere with decisions of local courts upon matters of procedure.

*Case referred to:-*

(1) *Ratnam* v. *Cumarasamy & Anor.* [1965] 1 M.L.J. 228; [1965] 1 W.L.R. 8.

PRIVY COUNCIL APPEAL FROM THE FEDERAL COURT OF MALAYSIA.

*Sir Charles Fletcher-Cook Q.C.* (*K.S. Nathan & Miss G. Ambiaviagar* with him) for the appellant.

*Anthony Colman Q.C.* (*Angus Glennis* with him) for the respondent.

**Lord Diplock** (delivering oral judgment of the Board): This is an appeal from an order of the Federal Court of Malaysia refusing special leave to appeal out of time from the judgment of the High Court in Malaya at Kuala Lumpur. In the case of *Thamboo Ratnam* v. *Thamboo Cumarasamy,*[1] which was a similar application in Malaysia, this Board expressed its reluctance to interfere with decisions of local courts upon matters of procedure. I cite a passage in the advice given in that case (at page 12) for it applies precisely to this case: "Their Lordships are satisfied that to allow this appeal would be substantially to interfere with the practice of the Board in regard to applications of this nature. The Board is not familiar with the practice in local courts and their Lordships are most unwilling to interfere with the exercise of their discretion upon questions of procedure". Their Lordships see no reason for departing from that salutary rule and they will advise His Majesty the Yang di-Pertuan Agong that this appeal should be dismissed with costs.

*Appeal dismissed.*

Solicitors: *Graham Page & Co.; Simmons & Simmons.*

# SINGAPORE REPORTS

## IN THE MATTER OF AN ADVOCATE & SOLICITOR*

**[O.C.J. (Wee Chong Jin C.J., Kulasekaram & Chua JJ.) August 27, 1981]**

**[Singapore — Originating Summons No. 55 of 1981]**

*Legal Profession — Advocate and solicitor — Grossly improper conduct — Delay in reporting employee's criminal misappropriation — Restitution as motive — Investigation — Scope — Punishment — Legal Profession Act (Cap. 217), ss. 84(2)(b), 87(5) & 93(1).*

The respondent, an advocate and solicitor of some 30 years standing and at the material time the President of the Law Society of Singapore, appeared before the Disciplinary Committee of the Law Society to show cause on the charge that his delay in reporting to the Law Society his legal assistant's criminal breach of trust of clients' monies amounted to grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Legal Profession Act.

The respondent admitted that his legal assistant named Santhiran had in March 1976 admitted to him that he, Santhiran, had misappropriated sums totalling $298,270.75 from the clients' account of Braddell Brothers of which firm the respondent was the sole proprietor; that between March 9 and June 10, 1976, Santhiran, with the knowledge and encouragement of the respondent had made restitution to the firm of $297,556.72 in respect of the monies misappropriated; that Santhiran was allowed to continue his employment in the firm as an Advocate & Solicitor until he left the service of his firm on December 21, 1976; and that the respondent did not report to the Law Society the conduct of Santhiran until April 30, 1977.

The respondent, though admitting that the delay of 13 months in reporting Santhiran's defalcations to the Law Society was "*prima facie* far too long" sought by giving evidence and calling witnesses to justify the delay and contended that it was a mere error of judgment.

The Disciplinary Committee found that the delay of 13 months was not an error of judgment but a premeditated scheme of delay; that the motive for the deliberate long delay was to obtain restitution from Santhiran; that the respondent took great pains to ensure that the object of his scheme was not prejudiced by any premature disclosure; that the method adopted by the respondent to achieve his purpose was dishonourable and that there was cause of sufficient gravity for disciplinary action against the respondent under section 84 of the Legal Profession Act.

At the hearing before the court of the Law Society's application for the respondent to be dealt with under section 84 of the Act, it was contended on behalf of the respondent, that the Disciplinary Committee wrongly went outside the complaint by inquiring into the alleged consequences of the failure to report; that in any case they attached far too much weight to them in all the circumstances of the case and that the Disciplinary Committee ignored a large amount of unchallenged evidence that was favourable to the respondent.

**Held:** (1) the Disciplinary Committee, on the evidence before it, was amply justified in disbelieving the respondent's explanation for the delay and in finding that the motive for the respondent's delay in reporting promptly to the Law Society was to obtain total restitution from Santhiran;

(2) as the respondent's defence was that he had an explanation for the long delay in reporting the defalcations which showed that he had committed an error of judgment and no more and that as a matter of law the long delay did not amount to "grossly improper conduct", the Disciplinary Committee could properly inquire into the respondent's motive for the admitted delay and into the consequences of such delay;

(3) the respondent was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Legal Profession Act;

* Leave to appeal to the Privy Council was granted.